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MENDOCINO DISTRICT COURT
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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 VAN PHILLIPS

11 Plaintiff,

12 -v-

13 JOHN D. DIAMOND, DIAMOND
14 PHILLIPS, INCORPORATED, an Illinois
15 Corporation, AND DOES 1 THROUGH
16 50, INCLUSIVE

CF 07 Case No. 3305

17) COMPLAINT FOR COMMON LAW
18) ACCOUNTING AND UNJUST
19) ENRICHMENT

20) (DEMAND FOR JURY TRIAL)

21 Defendants.

22 1. Plaintiff, Van Phillips, is and was at all times mentioned herein, a citizen of the
23 State of California in the County of Mendocino.

24 2. Defendant John D. Diamond is and was at all times mentioned herein a citizen
of the State of Utah.

25 3. Defendant Diamond Phillips, Incorporated is a corporation incorporated under

1 the laws of the State of Illinois, having its principal place of business in the State of Utah.
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3 4. Venue is proper in this Court, as plaintiff resides in this district and the claim
4 arose in this district.

5 5. Defendants herein provided architectural and other professional services related
6 to four separate construction projects on real property owned by Plaintiff.

7 6. The four projects include: the renovation and new addition to a farmhouse on
8 Navarro Ridge Ranch in Albion, California; renovation of a home known as Sausalito Main
9 House; renovation of a project known as the Green House, located in Mendocino, California;
10 and, renovation and new addition construction of a structure known as the Tea House in
11 Albion, California.

12 7. In addition, Defendants herein ordered construction materials for the four
13 construction projects described above. Those construction materials included, but may not be
14 limited to, windows, doors, plumbing fixtures and appliances (herein after collectively referred
15 to as "Construction Materials.")

16 8. Defendants charged Plaintiff for large amounts of Construction Materials that P,
17 are being stored in Utah in a warehouse owned by a third party . Because these Construction
18 Materials are not in Plaintiff's custody or control, he is unaware of the exact quantity and value
19 of Construction Materials paid for by him.

20 9. To date, Defendants have failed to provide sufficient documentation by way of
21 purchase orders, work orders, invoices, receipts, etc. to determine what materials were
22 purchased and for how much. As such, Plaintiff alleges that Defendants owe Plaintiff money,
23 consisting of refunds, for Construction Materials not purchased. Defendants' failure to account
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1 for said Construction Materials to the Plaintiff necessitates the need for an accounting of
2 property to determine the true amount of purchases.
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4 First Count
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6 **COMMON LAW ACCOUNTING**

7 (Against JOHN D. DIAMOND, DIAMOND PHILLIPS, INCORPORATED
8 AND DOES 1 THROUGH 50, INCLUSIVE)

9 10. Plaintiff realleges and incorporates by reference each and every allegation of the
10 above paragraphs 1 through 9 inclusive, as if fully set forth herein.

11 11. Plaintiff is informed and believes and thereon alleges that JOHN D.
12 DIAMOND, DIAMOND PHILLIPS, INCORPORATED AND DOES 1 THROUGH 50,
13 INCLUSIVE are fiduciaries of plaintiff herein, as Defendants are in a position of trust and
14 confidence upon which Plaintiff reasonably relied. Plaintiff relied upon Defendants
15 professional expertise and paid Defendants for Construction Materials that were supposed to be
16 appropriate and necessary for the job.

17 12. Plaintiff is informed and believes and thereon alleges that due to Defendants
18 failure to account for Construction Materials that plaintiff paid for, that Defendants owe
19 plaintiff money in an amount of which the plaintiff is ignorant and that can only be ascertained
20 by an accounting.

21 13. Additionally, Plaintiff is not in possession of the allegedly ordered Construction
22 Materials which paid for by Plaintiff, and as a result, it is necessary to compel the Defendants
23 to account for this property. Said property consisting of Construction Materials is not in
24 Plaintiff's possession or control.

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14. In order to determine whether Defendants owe Plaintiff money for payment of
3 Construction Materials, an accounting of property is necessary.

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6 Second Count

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UNJUST ENRICHMENT

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(Against JOHN D. DIAMOND, DIAMOND PHILLIPS, INCORPORATED
9 AND DOES 1 THROUGH 50, INCLUSIVE)

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15. Plaintiff realleges and incorporates by reference each and every allegation of the
above paragraphs 1 through 9, and 11 through 14 inclusive, as if fully set forth herein.

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16. Plaintiff is informed and believes and thereon alleges that Defendants either
overcharged Plaintiff for the Construction Materials or charged Plaintiff for Construction
Materials that were never purchased. Therefore, Plaintiff alleges that Defendants have been
unjustly enriched as they improperly obtained a financial benefit from Plaintiff's payment to
Defendants for said Construction Materials.

17. Plaintiff seeks restitution against Defendants for the recovery of those ill-gotten
gains in an amount to be proven at trial.

21 WHEREFORE, Plaintiff prays judgment as follows:

22 ON THE FIRST COUNT:

- 23 1. For an accounting of monies owed;
- 24 2. For an accounting of property paid for by the Plaintiff;
- 25 3. For a judgment against defendants John D. Diamond, Diamond Phillips,

Incorporated and Does 1 through 50 inclusive, for monies owed to the plaintiff in an amount to be proven at trial.

4. For costs of suit.

ON THE SECOND COUNT:

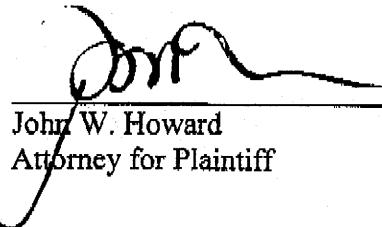
1. For restitution for ill-gotten gains for Construction Materials to be paid by all Defendants to Plaintiff in an amount to be proven at trial.

2. For costs of suit.

ON ALL COUNTS:

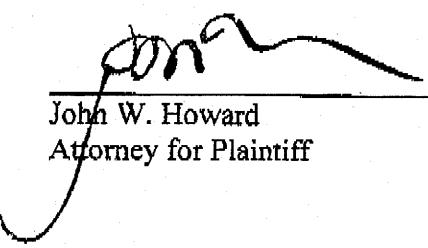
1. For such other relief that the court considers just and proper.

Dated: June 21, 2007


John W. Howard
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the *Federal Rules of Civil Procedure*.


John W. Howard
Attorney for Plaintiff